

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
FOR MONTGOMERY COUNTY

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PETITION OF ERP OPERATING LIMITED :  
PARTNERSHIP and T-MOBILE : Case No S-2809  
NORTHEAST, LLC :  
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A hearing in the above-entitled matter was held on July 11, 2011 commencing at 9:42 a.m., at the Council Office Building, Davidson Memorial Hearing Room, 2nd Floor, 100 Maryland Avenue, Rockville, Maryland 20850 before:

Lynn A. Robeson, Hearing Examiner

A P P E A R A N C E S

Page

ON BEHALF OF THE APPLICANT:

Gregory E. Rapisarda, Esq. 3

\* \* \*

INDEX

<u>STATEMENT OF:</u>	<u>PAGE</u>
Hillorie Morrison	23
Michael D. McGarity	50
Curtis Jews	55

\* \* \*

EXHIBITS

<u>NUMBER</u>		<u>PAGE</u>
16	Affidavit of Posting	4
17	Hillorie Morrison Resume	24
18	June 9, 2011 Letter	34
19	FAA Notice Criteria	36
20	June 2, 2011 letter to CSX	37
21	Aerial view of pole location	40
22	April 12, 2011 letter to HOA's and property owners	42
23	July 6, 2011 letter signed by William O'Bryan	45
24	Oakley Thorn CV	48
24(a)	Visual Impact Analysis	48
25	Michael McGarity Resume	50
26	Curtis Jews Resume	56
27(a)	Existing coverage map	57
27(b)	Proposed coverage map	59
28	Surrounding sites dropped calls data	60
29	Map of 4 adjacent T-Mobile on-air sites	61
30	Mr. Jews 7/6/11 letter	69
31	Radio Frequency Electromagnetic Energy Compliance Report	70

1                                    P R O C E E D I N G S

2                    MS. ROBESON:    This case is a special exception S-  
3    2809 for property located at, -- I apologize -- a petition  
4    of T-Mobile Northeast and ERP Operating Limited Partnership,  
5    for a telecommunications facility at 14001 Gray Eagle Court,  
6    Germantown, Maryland.    Will the parties identify themselves  
7    for the record.

8                    MR. RAPISARDA:    Good morning, Ms. Robeson.    I'm  
9    Greg Rapisarda with Saul Ewing, and I'm here on behalf of T-  
10   Mobile Northeast, LLC and ERP Operating Limited Partnership,  
11   as the applicant, and I'll refer to them as T-Mobile.

12                   MS. ROBESON:    Thank you.

13                   MR. RAPISARDA:    You're very welcome.    Thank you.

14                   MS. ROBESON:    Okay, I see some people in the  
15   audience.    I recognize Mr. Jews, but is there anyone here in  
16   opposition.    Okay, for the record I don't see anyone here in  
17   opposition.    Did you have the opportunity to do the  
18   Affidavit of Posting?

19                   MR. RAPISARDA:    We did.    We have a copy of that  
20   for you.    I have the original, a copy and then also a  
21   picture of the posting.

22                   MS. ROBESON:    Okay.

23                   MR. RAPISARDA:    And if you'd like, I've got a  
24   sticker on it I can pre-mark it as an exhibit if you'd like.

25                   MS. ROBESON:    Sure.    It would be Exhibit 16.    What

1 we usually do is if you could submit it here I'll go ahead  
2 and mark it. I'm going to rely on you to mark the larger  
3 items.

4 (Exhibit No. 16 was marked for  
5 identification.)

6 MS. ROBESON: Are there any preliminary matters?

7 MR. RAPISARDA: One quick question. Do you have a  
8 copy of the Exhibit List that I could use just to, I won't,  
9 I'll try not to duplicate any exhibits. I have 12 that we  
10 submitted with our application package, and so if that was  
11 16, I'm assuming the staff report is one of them that, you  
12 know, I wouldn't have put that in as an exhibit.

13 MS. ROBESON: I have the staff report. I have  
14 copies of the vicinity report, which is 14, which --

15 MR. RAPISARDA: Is Exhibit 12 the lease? That was  
16 the last one in our exhibit package.

17 MS. ROBESON: I tell you what, if you wish, no, I  
18 have copies of vicinity report, which are these.

19 MS. MORRISON: We're missing the list of exhibits,  
20 they're usually out front.

21 MS. ROBESON: I tell you what, why don't you do  
22 this, Dawn Minor in there, we can go off the record for just  
23 a minute or two and she would have it, and she can print you  
24 out one so you have everything we have. Have you seen  
25 Exhibit 14, which are these?

1 MR. RAPISARDA: Yes.

2 MS. ROBESON: So we'll go off the record for five  
3 minutes and allow him to go and get the exhibit list.

4 (Whereupon, a brief recess was taken.)

5 MS. ROBESON: We're back on the record. And, have  
6 you had a chance to review the Exhibit List?

7 MR. RAPISARDA: I have.

8 MS. ROBESON: Do you have any changes?

9 MR. RAPISARDA: No. Thank you very much.

10 MS. ROBESON: I am going to go right to, I noticed  
11 in your prehearing summary statement that you requested to  
12 proffer evidence. There's actually case law that says we  
13 have to take it under oath. Now, if you wish to, since  
14 there's no opposition here, one way to shorten it if you  
15 wish to do so is to adopt the technical staff report and its  
16 findings and conclusions, but there are a few things that  
17 the board has to make an independent finding on, like need.  
18 And technical staff doesn't really do that, they just rely  
19 on the tower report. So I would like to hear from Mr. Jews,  
20 but if you wish to adopt the technical staff report and its  
21 findings and conclusions, you can do that.

22 The other thing that I was hoping to do, I don't  
23 think they're in the record is the compliance report that  
24 you usually do and the fact sheets about the batteries, and  
25 the agreement to comply with FAA regs and Montgomery County

1 Executive --

2 MR. RAPISARDA: That's right. We have all of  
3 those that can be introduced as exhibits as well.

4 MS. ROBESON: And I noticed on the staff report,  
5 there were three things that if you could address them  
6 through testimony, I would feel more comfortable. One is  
7 the tower committee report, it says there's two co-location  
8 facilities but the technical staff report says there's  
9 three. And, as you know, and I looked at the site plan, it  
10 looks like there are three, but I'd just like you to address  
11 that so the record is clear as to what you're proposing.

12 MR. RAPISARDA: Okay.

13 MS. ROBESON: The other thing is there's a couple,  
14 I believe, mistakes and I think it's just, you know, from  
15 using a template from another decision, the address at one  
16 point the technical staff report uses, references Wildcat  
17 Road, which was another application. And it also mentions  
18 at one point the property is in the R-90 zone, but I'm  
19 fairly clear that this is in the PD-9 zone?

20 MR. RAPISARDA: It's in a PD-9 zone, and the  
21 reason that it references R-90 is because the code allows  
22 special exception uses under the R-90 zone to be special  
23 exception uses in a PD zone.

24 MS. ROBESON: All right.

25 MR. RAPISARDA: That's why it references that.

1 I'm not sure that that is a mistake as much as it is just  
2 trying to say that that's how you get the use in as a  
3 special exception because it's allowable or permissible in a  
4 R-90 zone.

5 MS. ROBESON: Okay, that's fine. So, I will let  
6 you decide how you want to handle it. You're able to adopt  
7 the finding and conclusions of the technical staff report,  
8 but I would want to see something independent on need, and  
9 it does have to be under oath.

10 MR. RAPISARDA: I think we can walk, we can walk  
11 through it pretty quickly --

12 MS. ROBESON: All right, that's fine.

13 MR. RAPISARDA: -- with the witnesses and that way  
14 we're not jumping around too much. If I may, one other just  
15 preliminary thing, on page 3 of the staff report it  
16 incorrectly says the size of the compound is 25 x 30, and  
17 it's 25 x 20. And then the future area for compound  
18 expansion, which is the landlord is reserving that space for  
19 future carriers equipment, but he's also, or it is also  
20 reserving the right to negotiate the lease with those future  
21 carriers. So the space is set aside for the compound, but  
22 T-Mobile hasn't leased it at this point, and I don't know if  
23 that's what caused this inaccuracy, but the compound as  
24 proposed is 25 x 20 with a future expansion --

25 MS. ROBESON: So you don't have a lease on the

1 balance of the compound?

2 MR. RAPISARDA: That is correct. So the balance  
3 of the compound, well, you know, the compound as proposed is  
4 25 x 20 and it would have the monopole, utilities, T-  
5 Mobile's equipment, then there's a future expansion area for  
6 when the other two carriers go onto the pole, they would put  
7 their equipment there, but the landlord will be, has  
8 reserved the, you know, has committed to giving the space  
9 away but he wants the rent from it or the landlord wants the  
10 rent from that, doesn't want to lease it to T-Mobile right  
11 now. So T-Mobile --

12 MS. ROBESON: Is your lease in the record?

13 MR. RAPISARDA: It is. It's Exhibit 8 in the  
14 record.

15 MS. ROBESON: I see that, okay. All right. Well  
16 let's --

17 MR. RAPISARDA: So that changes one other thing  
18 that says the square footage because our square footage is  
19 actually 500 square foot for the compound.

20 MS. ROBESON: Well, the only thing is can you co-  
21 locate two other carriers on the 500 feet?

22 MR. RAPISARDA: No, that's where the future area  
23 would be.

24 MS. ROBESON: Yeah, but the problem is that under  
25 the special exception standards you have to show the ability



1 to, it has to be, -- let me look at the actual standard -- I  
2 don't know if it says you have to have the ability or you  
3 have to show that you can accommodate. So, I mean really,  
4 let's talk about this. Really why don't you include this as  
5 the special exception area?

6 MR. RAPISARDA: Let me just double check it. Even  
7 though we're not leasing it you mean? Because that is  
8 what's showing for the future carriers. That was in there  
9 for --

10 MS. ROBESON: Where's your lease, that's 8?

11 MR. RAPISARDA: Yes.

12 MS. ROBESON: Can you direct me to the page --  
13 see, what I'm trying to get at is if you, you have to show  
14 that the owner is a co-applicant, which you've done, he's a  
15 co-applicant, but you also have to show that the facility  
16 has the capability of having three carriers. So if you  
17 reduce your special exception area so that it only covers  
18 one co-locater, then you don't meet the standards.

19 MR. RAPISARDA: If I could clarify it then.

20 MS. ROBESON: Yes.

21 MR. RAPISARDA: The compound area is 25 x 55 and  
22 will accommodate three carriers. What T-Mobile will  
23 initially build is what they've leased and they build  
24 something smaller.

25 MS. ROBESON: But you don't have a lease on the

1 other portion of it?

2 MR. RAPISARDA: That is correct, but ERP Operating  
3 Limited Partnership is our co-applicant here and they have  
4 approved the plans.

5 MS. ROBESON: Okay, but you have to --

6 MR. RAPISARDA: The plans show that it's a 25 x 55  
7 compound area.

8 MS. ROBESON: I understand, but you have to show  
9 that some kind of legal right to prosecute the entire  
10 compound. You follow what I'm saying?

11 MR. RAPISARDA: I do, and that's --

12 MS. ROBESON: And that's by, I think in the Board  
13 of Appeals rules, that is done by, you have to have a lease.  
14 You have to have a written document saying you have the  
15 right to control the entire compound.

16 MR. RAPISARDA: We have that in our application  
17 package where we've stated it, and we have that through  
18 their execution of the application.

19 MS. ROBESON: Okay, let me do this. Where in the  
20 lease does it address the future expansion?

21 MR. RAPISARDA: Well it wouldn't because that's  
22 not T-Mobile. It's not in the lease. That's not T-  
23 Mobile's, unless, do you think that it's in the lease? Is  
24 it on the LE? It's on the drawings.

25 MS. ROBESON: But not on the lease. See, under

1 the Board of Appeals' rules, you have to have a lease. You  
2 have to be able to show that you have the legal right to  
3 prosecute the application for that portion of the land. The  
4 other option is there is a waiver provision, but I don't  
5 know if you're prepared to say whether you meet those  
6 standards or not.

7 MR. RAPISARDA: Well, I'm not in, I'd have to look  
8 at the waiver provision, but you don't have to have a lease  
9 if you own the property. And I'm here today representing  
10 the co-applicant, both parties. One is the owner that's  
11 saying 25 x 55 is the compound size, and one is the first  
12 carrier that's going to be doing this construction, T-  
13 Mobile, and they're saying we're going to build this 25 x 20  
14 and allow the owner to lease that extra space so that they  
15 can then lease that extra space in a good faith negotiation  
16 to get that lease or to get that income.

17 MS. ROBESON: Okay, but what I don't have in front  
18 of me then is an application that has -- let me do this, let  
19 me get, the Zoning Ordinance is so big, I didn't carry it in  
20 with me.

21 MR. RAPISARDA: I didn't carry it in either. I do  
22 have some relevant sections.

23 MS. ROBESON: No. You know, I hate to do this  
24 but, can we take another two minute break so I can get the  
25 standards to see exactly what it says because what you're

1   saying here is that you're proposing on the site, what does  
2   the site plan propose?

3               MR. RAPISARDA:  It proposes, ultimately it  
4   proposes a 25 x 55 compound area that will basically be  
5   built in two phases.

6               MS. ROBESON:  Okay, let's just see what it says.  
7   So it doesn't include the future part.  Well it says 20 x 35  
8   future carrier leased area.

9               MR. RAPISARDA:  Right.  When you put those two  
10  together that's what makes it 25 x 55.

11              MS. ROBESON:  All right.  Let's do this.  Well,  
12  let me work this out so we know what to testify to.  So let  
13  me pull the regulations.  I hate to do this.

14              MR. RAPISARDA:  No, I think it's great.  I'd  
15  rather clear it up now as well.

16              MS. ROBESON:  Okay.  All right, we'll go off the  
17  record for another two minutes or you know, however long it  
18  takes, four or five minutes.

19              (Whereupon, a brief recess was taken.)

20              MS. ROBESON:  Okay, we're back on the record.  Did  
21  you get the copies?  I had her make some copies for you.

22              MR. RAPISARDA:  Thank you very much, yes.  I have  
23  a suggestion.  I don't know if now is the time.

24              MS. ROBESON:  What's your suggestion?  I'll take a  
25  suggestion.

1           MR. RAPISARDA: I think that, you know, there's an  
2 agreement between the co-applicants, T-Mobile and ERP to do  
3 a 25 x 55 compound.

4           MS. ROBESON: Where is that agreement? Is it this  
5 lease here or?

6           MR. RAPISARDA: Well, the lease doesn't  
7 specifically talk about that future carrier area. All it  
8 says, not all it says, but one of the things the lease does  
9 require the landlord to do, and ERP to do, is cooperate with  
10 all zoning laws. So the agreement is that, and also the  
11 agreement is it's not a written agreement in terms of words,  
12 but this site plan here, ERP has approved that, T-Mobile has  
13 approved that. The whole goal was the landlord really just  
14 wanted to reserve the right to lease to Verizon or AT&T and  
15 get the money for it.

16           Then the actual special exception area is going to  
17 be 25 x 55, so what we were thinking is that, I think it's a  
18 mistake the way it's written on our application where we say  
19 the compound is 25 x 20. We should say the T-Mobile  
20 compound might be 25 x 20, but we're requesting the special  
21 exception area of 25 x 55. And in doing that, you know, if  
22 it's possible we can amend the application to request the  
23 special exception area here on the record.

24           MS. ROBESON: Yeah, I think at a minimum you would  
25 have to do that.

1                   MR. RAPISARDA: We could even then leave the  
2 record open at the end.

3                   MS. ROBESON: See, what they usually do, if you  
4 look on page 23. Well, I think I, she put two of these  
5 together. If you look at 59-G-2.58(a)(5), what they  
6 normally do is they lease the entire compound. I understand  
7 the owner's wishes here, but the problem is it would be  
8 better for you if you could structure the lease differently  
9 so that T-Mobile has the entire area but provide for the  
10 rental income, no, you can't do that.

11                   What they normally do is you lease the entire area  
12 and then when other co-locaters come in, you don't have to  
13 amend your special exception. The way it is now, you would  
14 have to amend your special exception to increase that area.

15                   MR. RAPISARDA: And actually that's probably the  
16 most simple option is that the next, you know, well, I  
17 guess, we have to get ourselves over (a)(2)(5) which shows  
18 that we have to --

19                   MS. ROBESON: That's right. I still need, it said  
20 a support structure must be constructed to hold no less than  
21 three telecommunications carriers. Does the pole have  
22 capacity to hold three?

23                   MR. RAPISARDA: Yes.

24                   MS. ROBESON: The pole has capacity to hold three.  
25 This is unopposed. This is what I would suggest, because I

1 really don't want to approve it with a 25 x 20 compound. It  
2 does say support structure. Oh no, it says the equipment  
3 compound must have --

4 MR. RAPISARDA Must have sufficient area.

5 MS. ROBESON: So I, you know, what I have to do,  
6 what I think the safest thing for you to do because right  
7 now at this day and time it's unopposed, would be for you to  
8 submit an amendment and I don't know what you have, maybe I  
9 would accept just a letter from ERP saying that you have the  
10 right to prosecute for the entire site. But I need  
11 something, technically for you to proceed, you have the  
12 owner but for you to proceed or for T-Mobile to proceed as  
13 an applicant, we usually require a lease for the entire  
14 compound so that we know you have the right to do what you  
15 say you're going to do.

16 MR. RAPISARDA: Right.

17 MS. ROBESON: So the optimal thing would be a  
18 lease amendment. If you wish, and I have to think through a  
19 little more, if that's an impossibility, then I would  
20 suggest, you know, at the very minimum a letter from the  
21 owner.

22 MR. RAPISARDA: Right. So what I would ask that  
23 we do then is, I don't think we can amend the lease because  
24 those are, it's a set lease. I mean it's, and it's, I just  
25 don't think that's also the simplest way. I think the best

1 way to go would be, Ms. Morrison knows of the agreement.  
2 She has personal knowledge of it. We orally amend our  
3 special exception area to be 25 x 55.

4 MS. ROBESON: Well, no. I didn't mean to go no.

5 MR. RAPISARDA: No, I know. I'm doing this in  
6 steps. I'm doing this in steps. That's not the extent of  
7 what I was offering. And then she would testify that that's  
8 the special exception area and the agreement between the  
9 landlord, and then we could leave the record open and get a  
10 letter from ERP certifying that we understand this and we  
11 are certifying and.

12 MS. ROBESON: That is fine. What I would need is  
13 an amended site plan just showing that area, and you're  
14 going to have to show, you know, the fencing and all that  
15 kind of stuff around that area. And the landscaping around  
16 that area. Or you could say, I guess, that the fence will  
17 be expanded. You know, it's your burden of proof. I'm just  
18 trying to think through some options. We're going to take  
19 testimony today. I have to send out, I really do need a  
20 site plan that shows the entire area of the site. It should  
21 have, you know what, I realize, I think you're going to have  
22 to show the fence on the entire area as well as the  
23 landscaping.

24 MR. RAPISARDA: But T-Mobile doesn't have a right  
25 to build that fence because they haven't leased that area.



1 MS. ROBESON: Well see, that's the problem.

2 MR. RAPISARDA: Well, the way that we've done this  
3 in other jurisdictions, and I, Hillorie said that she  
4 thought that, I don't know if it's happened here but, you  
5 know, a lot of landlords are trying to do this now where  
6 they're saying I want to be in charge. I don't want you  
7 negotiating with AT&T and then giving me the money. I want  
8 to be in charge of that, my land. And so I'm going to lease  
9 you this. I'm going to agree that you can have this much,  
10 because that's what you need for zoning, but I'm going to  
11 lease you this much and then when AT&T comes along I'm going  
12 to lease this, and when Verizon comes along I'm going to  
13 lease this, and when Sprint comes -- so, it's really part of  
14 that private agreement between the parties.

15 The code really just requires that there is space,  
16 sufficient space. It doesn't say it has to be fenced or  
17 landscaped. It just says there has to be sufficient space.  
18 And so I'm, I mean obviously we have the burden, but if  
19 you're telling me that you don't think that that would meet  
20 the burden then.

21 MS. ROBESON: Well, I guess what I'm saying is  
22 that first of all, I've practiced in three or four  
23 jurisdictions, and Montgomery County is different in the  
24 sense that they are fairly strict on having a legal interest  
25 to be able to prosecute the application. And I know that,

1   you know, the owner is here, but part of what we do when we  
2   approve a special exception is that we have to say that the  
3   landscaping is okay. That the fencing is okay. So that's  
4   part of the approval we have to do. And the reason for the  
5   requirement for every special exception, not just this, that  
6   both parties have to have control of the land is that, and  
7   that's been in Montgomery County's code for a long time, is  
8   that they know that you're going to, you have the capability  
9   of doing what you say you're going to do.

10               Now, the other thing, there's a waiver provision  
11   in here.

12               MR. RAPISARDA: And we're familiar with the waiver  
13   provision, but we're not interested in doing that because  
14   ultimately the goal here is to have the future carriers, not  
15   to make this a one carrier stealth monopole.

16               MS. ROBESON: Well, I mean, you're free to do as  
17   you wish. Well, the other option is to have ERP approve the  
18   fence and landscaping for the other area, for the other  
19   portion of the area. And then you don't have to do it.  
20   But, you know, just for future reference, they're pretty  
21   strict on requiring both owner and lessee to have a legal  
22   right to prosecute the application, and I understand the  
23   changing economics of it. On the other hand, having done  
24   real estate transactions, I'm a firm believer that there's  
25   always a way to structure a deal just giving you some kind

1 of blanket, you know, some level of control sufficient to  
2 prosecute the application. But anyway, you know, if ERP  
3 wants to say this is okay to -- if ERP wants to show  
4 fencing, because you do represent ERP, and the fence, you  
5 know, that would be acceptable. So if you want to have, I'm  
6 sorry, I can't remember your civil engineer's name, but --

7 MR. RAPISARDA: Michael McGarity is here, with DMW  
8 today.

9 MS. ROBESON: That's right. If Mr. McGarity wants  
10 to revise this to show the entire site with the same  
11 fencing, you know, and ERP will agree to that, because  
12 that's simply external. That doesn't mean that, you know,  
13 that has nothing to do with the economics of how you  
14 structure the deal. So if they would agree to that, that  
15 might be an option. Do you need to take a few minutes?

16 MR. RAPISARDA: I was going to ask you, could we  
17 go off the record for a few minutes.

18 MS. ROBESON: Oh sure, why not.

19 MR. RAPISARDA: And then we'll come back and  
20 tighten this up.

21 MS. ROBESON: No, that's fine. And then we'll  
22 take the witnesses. I don't think the witnesses will take  
23 too long. Not that I don't like listening to you, Ms.  
24 Morrison, but. Okay, we'll go off the record. Do you want  
25 15 minutes?

1                   MR. RAPISARDA: I think five minutes is going to  
2 be fine.

3                   MR. ROBESON: Okay.

4                   MR. RAPISARDA: Sorry to keep you running back and  
5 forth. If you want 15, we can do 15.

6                   MS. ROBESON: No, no.

7                   (Whereupon, a brief recess was taken.)

8                   MS. ROBESON: Okay, we're back on the record. Did  
9 you have a chance to consult?

10                  MR. RAPISARDA: We did. There are two things that  
11 I'd like to talk to you about. The first is that a re-  
12 reading, we started to go there when we were reading the  
13 code provision all together, but I think we figured out why  
14 this has been done in the past and it hasn't become an  
15 issue. And that's on the code. So at 258, the same  
16 provision (5) that we're looking at, it says that a support  
17 structure must be constructed to hold no less than three  
18 telecommunications carriers. And that's what we show, and  
19 that's what is happening.

20                  MS. ROBESON: Right.

21                  MR. RAPISARDA: Then it says, the board may  
22 approve a support structure holding less than three carriers  
23 if, and the section that refers to the equipment compound  
24 must have sufficient area, is only related to the waiver  
25 request. So for instance, if you were requesting a waiver

1 to only allow two carriers, then you would have to show the  
2 two carriers could fit in your compound. But we're not  
3 requesting a waiver. We have a tower for three carriers and  
4 so we don't have to show that our equipment compound is  
5 sufficient to accommodate them because that's already a  
6 requirement. We have to have that. And so this has been  
7 done before. I haven't done that in this county, but Ms.  
8 Morrison said that they've done this before and it hasn't  
9 come up and we were trying to figure out why, and it's  
10 because that provision only attaches to the waiver.

11 MS. ROBESON: Right, but, well, whoever, okay, so  
12 you don't care that the special exception request would have  
13 to be amended.

14 MR. RAPISARDA: With that said, we would like to  
15 amend the special exception area to be 25 x 55.

16 MS. ROBESON: Well, I can't do that because you  
17 don't control that.

18 MR. RAPISARDA: ERP does and I am here on behalf  
19 of both of them, and they are the co-applicants, and  
20 Hillorie could speak for them as well. Maybe then we could  
21 still leave the record open and go and memorialize it a  
22 little bit better to get you a letter or something like  
23 that.

24 MS. ROBESON: Well, you also still have to show  
25 the fence and the landscaping. All right.

1                   MR. RAPISARDA:  So, I don't know.  I mean, would  
2   you agree that it doesn't connect?  It's only if you're  
3   asking for a waiver.

4                   MS. ROBESON:  I don't know.  I do know that the  
5   board will require a special exception modification to  
6   expand the area.  I remember having a discussion like that,  
7   but I guess I don't know the past history.  I haven't spoken  
8   with Katherine Freeman, she's not here at the moment, who's  
9   the director.  So, I don't know how its been handled.  Now,  
10  I'm willing to consider whatever you want to do because it's  
11  your burden of proof.

12                  MR. RAPISARDA:  You know, we are just, we're  
13  trying to solve a problem for the future carriers, and what  
14  the application and what the agreements and what this  
15  proposal is set up for is to --

16                  MS. ROBESON:  Memorialize T-Mobile's portion of  
17  the future facility.

18                  MR. RAPISARDA:  That's exactly right.  And let it  
19  be known that ERP and T-Mobile will be expanding the  
20  compound at some point.  But you know, if AT&T has to amend  
21  the special exception in order to put their equipment in,  
22  then so be it.  I'm not here representing AT&T.

23                  MS. ROBESON:  Right.

24                  MR. RAPISARDA:  And I do think that we're ready to  
25  present the case in terms of how it meets the code.

1 MS. ROBESON: Well, let's go ahead and do that.  
2 So call your first witness.

3 MR. RAPISARDA: Thank you very much. Ms. Hillorie  
4 Morrison.

5 (Witness sworn.)

6 DIRECT EXAMINATION

7 BY MR. RAPISARDA:

8 Q Good morning, Ms. Morrison. I wanted to make sure  
9 we hadn't crossed the line yet.

10 MS. ROBESON: We haven't crossed that line.

11 MR. RAPISARDA: That's good.

12 BY MR. RAPISARDA:

13 Q Could you state your name and spell it for the  
14 record, and then also your company you work for and your  
15 business address.

16 A It's Hillorie Morrison, H-I-L-L-O-R-I-E.  
17 Morrison, M-O-R-R-I-S-O-N, 7380 Coca Cola Drive, Network  
18 Building and Consulting in Hanover, Maryland 21076. Can you  
19 hear me okay?

20 COURT REPORTER: If you could pull that a little  
21 closer to you that would be great. Thank you.

22 MR. RAPISARDA:

23 Q I know you've had a voice treatment recently but  
24 you are feeling okay and able to testify so far?

25 A Yes.

1           Q     Could you give a very brief overview, I know  
2     you're --

3           MS. ROBESON:  Well, I'll accept her.  She's been  
4     accepted many, many times.  What were you going to proffer  
5     her as, a land planner?

6           MR. RAPISARDA:  I'd say an expert witness in  
7     project management relating to infrastructure development,  
8     in particular, site acquisition, zoning and planning and  
9     impacts of new facilities.

10          MS. ROBESON:  Okay, and I would add land planner.

11          MR. RAPISARDA:  And land planner.  I would add  
12     that as well.  Thank you.

13          MS. ROBESON  Okay.  So she'll qualify as that.

14          MR. RAPISARDA:  Great.  For the record then I'll  
15     have what I will mark as, you would like me to keep these  
16     numbers going?

17          MS. ROBESON:  Yes, please.

18          MR. RAPISARDA:  Ms. Morrison's resume, which I  
19     will mark as Exhibit 17.

20                                 (Exhibit No. 17 was marked for  
21                                 identification.)

22          BY MR. RAPISARDA:

23          Q     Could you just identify this for the record?

24          A     It's my resume.

25          Q     Did you prepare that?



1           A     I did.

2           Q     Is it accurate?

3           A     Yes.

4                   MR. RAPISARDA:  I'd like to move this into  
5 evidence.

6                   MS. ROBESON:  Fine.  Thank you.

7                   BY MR. RAPISARDA:

8           Q     Ms. Morrison, you are, does T-Mobile have, are  
9 they licensed by the FCC?

10          A     T-Mobile is licensed by the FCC.

11          Q     And as part of that FCC license, does it build out  
12 and fill in coverage gaps when it has them?

13          A     Yes.  T-Mobile Northeast, LLC is specifically  
14 licensed to provide, was specifically charged with building  
15 the network in the Washington Metro area.

16          Q     And are you, I know you said you were with NB&C.  
17 Are you a full-time 100 percent consultant to T-Mobile  
18 Northeast, LLC?

19          A     Yes, I'm a 100 percent for T-Mobile.

20          Q     Are you familiar with the site at 14001 Gray Eagle  
21 Court?

22          A     Yes, I am.

23          Q     Did you commission plans for the site?

24          A     Yes.  NB&C commissioned the plans on behalf of T-  
25 Mobile to Defkin and Walker.

1           Q     And are those the plans that are actually already  
2     in evidence as petitioner's exhibit 4?

3           A     Yes.

4           MR. RAPISARDA:   You don't want a new copy or  
5     anything like that?

6           MS. ROBESON:   No, no.

7           MR. RAPISARDA:   They haven't changed.

8           BY MR. RAPISARDA:

9           Q     And are these the plans as you know them?

10          A     Yes.

11          Q     And you're familiar with the area at Gray Eagle  
12     Court as well?

13          A     Yes, I visited the site.

14          Q     And are these plans accurate to your knowledge?

15          A     Yes, they are certified, and yeah, they're  
16     accurate.

17          Q     Okay.   And I know when you submitted this, when T-  
18     Mobile submitted this originally there was a chain link  
19     fence with barb wire at the top, is that correct?

20          A     Yes.   Right now as submitted the plan show a chain  
21     link fence with barbed wire at the top.

22          Q     Are you familiar with the staff report that  
23     requests or that recommends a wooden board on board fence in  
24     place of the?

25          A     Yes.   Yes.   No problem.   We do have a wooden board

1 on board fence discussed with our co-applicant and that can  
2 be changed.

3 Q So for the record, is T-Mobile's compound area 25  
4 x 20?

5 A Yes, that's to accommodate T-Mobile's equipment.

6 Q And that would also include the utilities and the  
7 monopole itself?

8 A Right. I think the monopole related electrical  
9 equipment that would also serve future carriers.

10 Q Okay. And do the plans show a future compound  
11 area expansion for future carriers?

12 A Yes. It shows a dotted area. T-Mobile understood  
13 that the, T-Mobile explained to the landlord, the owner of  
14 the property, when they were looking at these plans that we  
15 would be building a pole that could accommodate,  
16 structurally accommodate three carriers, which is what ERP  
17 wants on the property. And that T-Mobile would immediately  
18 lease a portion of the land to accommodate its own  
19 equipment, and that additional land area would be needed  
20 eventually for future carriers. So for this reason, the  
21 plans show kind of a dotted area for future carriers is on  
22 here exactly how much land area each future carrier is going  
23 to need and when they're going to need it. In order not to,  
24 to minimize the disturbance to the property and because we  
25 don't know when the future carriers are going to come, it's

1 shown in two parts so that T-Mobile's lease area would be  
2 constructed first and then, but there's definitely room for  
3 future carriers.

4 Q And you know that the landlord has agreed to  
5 comply with the zoning code requirements and expand the  
6 compound as needed for future carriers?

7 A Part of the lease agreement, on the first page of  
8 the lease agreement the landlord has to agree in signing the  
9 lease, to comply with, to enable T-Mobile to get the  
10 necessary permits, whether it's a special exception or  
11 zoning text amendment, or a building permit. It was  
12 explained to the landlord that showing the space for future  
13 carriers would be helpful, not technically required to get  
14 the approval, but since we're building the support structure  
15 for future carriers, it would be helpful to show that we  
16 definitely have a place for future carriers, and he agreed  
17 to show this area.

18 In this case, we worked with a lot of different  
19 sites sometimes land is getting tight, sometimes hard to  
20 find the future area. In this case it's very clear. We're  
21 tucked against the tennis court and there's a linear area  
22 that really is out of the way for any other use at the  
23 apartment building, and it's very easy for the property  
24 owner to dedicate the future carriers.

25 Q Can you on behalf of T-Mobile and ERP request that

1 the special exception area include T-Mobiles 20 x 20  
2 compound as well as the future area for a total of 25 x 55  
3 feet?

4 A Yes. I think it's a more accurate depiction of  
5 the actual special exception area as distinguished from T-  
6 Mobile's lease area. They're really two different things.

7 Q In the event that that, you know, would you also  
8 be willing to leave the record open if we wanted to  
9 memorialize that or in some way to expand that special  
10 exception to be 25 x 55?

11 A Certainly. We'll be coming back with a revised  
12 plan showing the fence. We can include in that plan a  
13 notation as to the special exception area versus the lease  
14 area, and the fence and landscaping.

15 Q Now, in the alternative, even if we didn't amend  
16 anything, does the plan as shown 20 x 25 with a 25 x 25 for  
17 compound, and the plan as proposed, does that by itself meet  
18 the special exception, the specific special exception  
19 requirements in the code?

20 A Technically it does because the code specifically  
21 requires that we build the pole to accommodate three  
22 carriers. It seems to be the intent of the Zoning Ordinance  
23 that a pole not be built that could not structurally  
24 accommodate the three carriers to start with. And we're  
25 certainly doing that.

1           Q     But even if we kept the plans as is with the 25 x  
2     20 compound fenced area, that, in your opinion, still meets  
3     the code requirements because of what it's asking?

4           A     Yes.

5           Q     And so in that case, potentially these future  
6     carrier would have to amend the special exception to expand  
7     the compound in the event that we were only approved for a  
8     25 x 20 special exception area?

9           A     That's correct. And then we'll be showing that  
10    there is space to expand the compound in the future.

11          Q     Okay. But you are asking the hearing examiner to  
12    take into consideration all of the use including the future  
13    area in terms of making that a special exception area?

14          A     Yes.

15          Q     Could you just tell us briefly, we're call it a  
16    monopole, but I know it has other names to it and there's a  
17    stealth design to it. Could you just briefly explain that?

18          A     Technically, in telecom language, this isn't a  
19    monopole, it's a unipole, or a slim line design, because the  
20    antennas are on the inside. You've seen several like this.

21    It does a better job of disguising it's use.

22    (Indiscernible) and I think we're showing a light brown. It  
23    can be painted any color to blend in with the surroundings.

24          Q     Now, does this site in this proposal, and I know  
25    this isn't your first one, and it's been established and

1   you've been here before, but does it meet all of the general  
2   special exception requirements in Section 59-G-1.21?

3           A     Yes, it does.  As a non-manned facility it doesn't  
4   create traffic or parking.  Probably two site visits, one  
5   site visit a month for T-Mobile at the most for maintenance  
6   and repair.  The mission (indiscernible) problem.

7           Q     But you are familiar with the zoning code and  
8   those general requirements?

9           A     Certainly, the general criterion.

10          Q     And you believe that this meets all of them.  So  
11   without walking through each one --

12          A     Right.

13          Q     -- you're familiar with them and you can do that?

14          A     Yes.

15          Q     Now, other than the western setback of 75 feet,  
16   does this proposal meet the letter of all of the specific  
17   special exception requirements in Section 59-G-2.258?

18          A     Yes, if that's the paragraph that relates to  
19   property (indiscernible).

20                MS. ROBESON:  You don't have these memorized?

21                THE WITNESS:  The property line setback is almost  
22   six times the requirement from any other direction.  It's  
23   very well sited on the property because --

24                MR. RAPISARDA:  It's 2.58 for the record.

25                THE WITNESS:  A one to one setback is required

1 from each property line, that is each foot of height of the  
2 pole for the setback from the property line. We have  
3 setbacks of, we have a 100 foot high pole. We have  
4 setbacks --

5 MR. RAPISARDA: No, we have a 95 foot pole.

6 THE WITNESS: 95 foot high pole.

7 BY MR. RAPISARDA:

8 Q Well, before you get into reading that, can I just  
9 ask you another question about, so there's a, this meets all  
10 the code requirements except we mentioned the western  
11 setback, in Section 59-G-2.58(a)(1)(D), does that allow the  
12 board and the hearing examiner to reduce the setback if the  
13 location is less visually obtrusive?

14 A Yes, it does.

15 Q Okay, and so it allows it to reduce it to a  
16 typical building setback and that's well, 75 feet is well  
17 within that so can the board and the hearing examiner grant  
18 this waiver of a 20 foot reduction in this case?

19 A Yes. And it's my belief that the board should  
20 because as I started to mentioned before, the pole is  
21 otherwise set back very much substantially more than the  
22 required setback from the property line. This particular  
23 location on the property puts it very close to, closer to  
24 the CSX railroad boundary, which happens to be very well  
25 vegetated. It puts it further from the buildings. It puts



1   it further from Great Seneca Road and Wisteria Drive, and  
2   (indiscernible). Really the visibility, as you can see in  
3   the photos, is reduced at this location. I think it's a  
4   very legitimate use of the (indiscernible).

5           Q     So in addition to this meeting the waiver  
6   requirement that we're requesting, did you also reach out or  
7   did T-Mobile also reach out to CSX to inform them of the  
8   request for a waiver?

9           A     Yes. T-Mobile wants to be sure that any adjacent  
10  property owner that falls within that setback area, even  
11  though they received notification from the board, knows that  
12  we're specifically requesting a waiver and the setback  
13  requirement letter that's written to CSX --

14                  MR. RAPISARDA: I've got a letter that I will pre-  
15  mark or I'll mark as Exhibit 18.

16                  MS. ROBESON: Well, I think it's already somewhere  
17  in the record. It's attachment 10 to the staff report.

18                  MR. RAPISARDA: Oh, okay.

19                  MS. ROBESON: Or is yours signed?

20                  MR. RAPISARDA: No. This is the same one that was  
21  sent out.

22                  BY MR. RAPISARDA:

23           Q     So did T-Mobile reach out to them on June 2nd with  
24  a letter?

25           A     Yes, we did.

1 MS. ROBESON: And, is that letter attachment 10 in  
2 the staff report? The very last thing.

3 BY MR. RAPISARDA:

4 Q Is that the letter?

5 A Yes.

6 Q In that letter did T-Mobile also say that they  
7 were going to design the proposed unipole, stealth monopole,  
8 to have a reduced fall zone, if you will, so that it would  
9 be engineered in the event of a compromise to stay on ERP's  
10 property?

11 A Right. The fall zone was going to take into  
12 account the pole would only fall, if it fell at all, onto  
13 ERP's property.

14 MR. RAPISARDA: So I have what I'll mark as  
15 Exhibit 18, it's a June 9th letter that I will let you  
16 describe. If you could describe that.

17 (Exhibit No. 18 was marked for  
18 identification.

19 THE WITNESS: This is a letter from a company that  
20 builds towers for T-Mobile. We obviously haven't put out  
21 the contract yet to build this particular pole because we  
22 don't have a building permit. But the letter states that  
23 the pole will be designed to meet the parameters of the fall  
24 radius of 70 feet or less.

25 MR. RAPISARDA: So I could ask that this be moved

1 into evidence as 18.

2 MS. ROBESON: Thank you.

3 BY MR. RAPISARDA:

4 Q So this is a 95 foot unipole. How so? It's  
5 proposed as 75 feet from CSX's property. That area makes it  
6 less visibly obtrusive to or less visible to Gray Eagle as  
7 well as Great Seneca, is that correct?

8 A Oh yes.

9 Q The location.

10 A From all the adjacent streets.

11 Q And it will have a reduced fall zone --

12 A In the one direction.

13 Q Great. I think it'd be in all directions. One of  
14 the requirements, the lighting requirements is that you  
15 can't illuminate it unless the FAA requires illumination.  
16 Did you do an FAA tow air study or tower air study to  
17 determine --

18 A Yes, we did.

19 Q I'm marking this as Exhibit 19. Could you  
20 identify that for the record?

21 A Yes. This is the FAA notice criteria. It's an  
22 online tool that's used to determine whether notice is  
23 required to the FAA and based on the coordinance and the  
24 height, the ground elevation and the height of this pole,  
25 the result is that we do not exceed notice criteria.

1 (Exhibit No. 19 was marked for  
2 identification.)

3 BY MR. RAPISARDA:

4 Q Thank you. And is this accurate? Did you do this  
5 and it's accurate?

6 A Yes.

7 Q Thank you very much.

8 MR. RAPISARDA: I'd like to move this in as 19(a).

9 BY MR. RAPISARDA:

10 Q As the general, I know there's more specifics the  
11 FAA has, but isn't the general rule of thumb 200 feet?

12 A For the height of the tower.

13 Q For a height of a tower to be lit?

14 A Yes. Generally, 200 feet.

15 Q So this is a 95 foot --

16 A This is 95 feet.

17 Q So if you could, Ms. Morrison, this is attachment  
18 10, -- you have a copy of attachment 10, which is the June  
19 2nd letter to CSX?

20 A Right.

21 Q And this is signed by Mr. Ellington?

22 A Yes.

23 Q Is this accurate except for the additional  
24 signature? Is it the same?

25 A It's the same letter.

1           Q     And it went out? This is the one that actually  
2     went out?

3           A     That actually went out.

4                   MR. RAPISARDA: Could we admit this into evidence  
5     as maybe Attachment 10(a) or (b).

6                   MS. ROBESON: Well, attachment, no, it'll be 20.

7                                 (Exhibit No. 20 was marked for  
8                                 identification.)

9                   MR. RAPISARDA: I ask that this be moved in as 20.

10                   MS. ROBESON: Sure.

11                   BY MR. RAPISARDA:

12           Q     So generally, when T-Mobile identifies a coverage  
13     gap, and we have an RF engine here, Mr. Jews will be able to  
14     address the specifics, but they basically provide you with  
15     an area where they say we need coverage in this area and  
16     then you oversee a site identification and acquisition?

17           A     Yes.

18           Q     And I know you did the transmission facility  
19     coordinating group for the tower committee, but before you  
20     proposed a new monopole, does T-Mobile prefer to co-locate  
21     on an existing structure?

22           A     Yes, we do.

23           Q     Is that because it's required in the code?

24           A     Well, it's required in the code, but it's also  
25     faster and it's easier and it cost less to just put antennas

1 on an existing structure.

2 Q So there was a submission to the tower committee  
3 or the transmission facility coordinating group?

4 A Yes, there was.

5 Q And, was it the same proposal that showed a 95  
6 foot unipole with T-Mobile plus two additional carriers?

7 A To my recollection it was, yes.

8 MS. ROBESON: If I could, what's attached to the  
9 staff report, that's where it says, -- okay, it's attachment  
10 six and then the last page says approval by the Board of  
11 Appeals of a special exception and for the site  
12 accommodating equipment for less than three carriers.

13 MR. RAPISARDA: That's a mistake.

14 MS. ROBESON: Oh, that's a mistake?

15 MR. RAPISARDA: That's a mistake. In fact, what  
16 caused that mistake was this future carrier area.

17 MS. ROBESON: I see.

18 MR. RAPISARDA: And so what they did subsequent to  
19 that is they issued a memo, well, the memorandum on February  
20 2nd, and we asked, we called Mr. Honeycutt and asked him  
21 about this, if we could get a new letter and a new  
22 recommendation, and he said, I believe the February 2nd  
23 covers it which says that they recommended approval, on  
24 approval by a special exception and/or an amendment to the  
25 development plan. And he felt that that covered it.

1 MS. ROBESON: All right, well --

2 MR. RAPISARDA: Because we are not asking for  
3 that, and we didn't ask for that at the tower committee as  
4 well.

5 MS. ROBESON: All right, go ahead.

6 BY MR. RAPISARDA:

7 Q Will this pole accommodate three carriers?

8 A It will accommodate three carriers.

9 Q Okay. So if there's a mistake in the tower  
10 committee recommendation it doesn't change T-Mobile's  
11 application?

12 A No. I think T-Mobile's rad center was the same.

13 Q So there were no --

14 A (Indiscernible) of the Zoning Ordinance, it's  
15 designed for three carriers.

16 Q Sounds good. So you had to build another site  
17 when there's no co-location opportunities and you found this  
18 one obviously. Over here, could you identify that that's  
19 hanging up there?

20 MR. RAPISARDA: And, would you like a large size  
21 of this?

22 MS. ROBESON: Yeah. This I'm going to ask that  
23 you mark as Exhibit 21. And if you could, yeah, if that's  
24 what you're going to refer to. And if you could describe  
25 it.

1 (Exhibit No. 21 was marked for  
2 identification.)

3 BY MR. RAPISARDA:

4 Q Ms. Morrison, could you describe this? Just this  
5 page right here.

6 A This is an aerial of the (indiscernible).

7 Q And does this also show why it's moved to that  
8 side closer to the tracks because of the screening and the  
9 trees, and the mature trees?

10 A Right. These are the mature trees.  
11 (Indiscernible.)

12 Q And did the staff report on page 10 also note that  
13 they believed this, by moving it closer to CSX and location  
14 of it minimizes the visibility?

15 A Yes.

16 Q So you've been to the site. This aerial view was  
17 gotten off the internet?

18 A I didn't (indiscernible).

19 Q Came off Google Maps off the Internet?

20 A Yes.

21 Q And is this accurate to your knowledge of being  
22 there?

23 A Yes. Absolutely.

24 Q I know you never flew over it, but.

25 MR. RAPISARDA: We'd like to move this into --



1                   MS. ROBESON:   Okay, so 21 will be aerial view of  
2   location.   Pole location.   And this will be, is this a  
3   different?   Yes.   This is larger scale, I mean smaller  
4   scale.

5                   MR. RAPISARDA:   I don't feel the need to put them  
6   all in.

7                   MS. ROBESON:   Okay, that's fine.

8                   MR. RAPISARDA:   Because I think that this covered  
9   it.   You can only look at a forest in so many different  
10   directions.

11                  BY MR. RAPISARDA:

12                Q     So one of the other things when T-Mobile does this  
13   and they find a new spot, they also care about visual  
14   impact?

15                A     Yes.

16                Q     And does T-Mobile conduct a visual impact survey?

17                A     Yes, we do.

18                Q     Now, a visual impact survey, is that a balloon  
19   test?

20                A     Yeah, it's a balloon test where the balloon is  
21   raised to the height of the proposed tower and the balloon  
22   took pictures.   From adjacent properties.   Or not to  
23   adjacent, adjacent roadways and public places.

24                Q     And was a balloon test conducted on April 25,  
25   2011?

1           A     Yes, it was.

2           Q     And, I know that you don't have to under the code,  
3 but did T-Mobile notify adjacent property owners and  
4 homeowners associations?

5           A     Yes, we used the list that was provided for the  
6 special exception petition we notified homeowners and  
7 adjacent property owners.

8           Q     Was this letter, I have what I'll mark as Exhibit  
9 22, it's a letter dated April 12th from Amy Berg. Is Amy a  
10 colleague of yours?

11          A     Yes.

12                               (Exhibit No. 22 was marked for  
13                               identification.)

14               BY MR. RAPISARDA:

15          Q     And could you describe this letter? Well, is this  
16 the letter that went out to all the homeowners associations  
17 and adjacent property owners?

18          A     Yes.

19          Q     About the balloon test?

20          A     It gives the date of the balloon test and it's a  
21 very complete description of what we're trying to build and  
22 it states that we'll be inside the apartment complex.

23          Q     And this letter went out on April 12, 2011?

24          A     It went out on April 12th.

25          Q     Thank you.

1                   MR. RAPISARDA: I'd like to move this in as  
2 Exhibit 22.

3                   MS. ROBESON: Okay. Thank you.

4                   BY MR. RAPISARDA:

5           Q       So you sent the letter out to CSX, T-Mobile has.  
6 They've sent the letter to all the homeowners associations  
7 and adjacent property owners.

8           A       Yes.

9           Q       There was the proper posting. There was a letter  
10 from the county. Has there been any opposition to this site  
11 at all?

12          A       No.

13          Q       In terms of visual impact survey, this is on the  
14 Exhibit List as 10.

15          A       10(a).

16                   MR. RAPISARDA: 10(a) through (o). But you  
17 already have that. I won't give you another copy of it.

18                   MS. ROBESON: Yes.

19                   BY MR. RAPISARDA:

20          Q       But you're familiar with the site?

21          A       Yes.

22          Q       These photographs of the balloon test are accurate  
23 as you know it?

24          A       Yes.

25          Q       And you're also familiar with how photo

1 simulations are made?

2 A Yes. I participated in dozens and dozens of these  
3 studies.

4 Q And so what these photos show are six areas where  
5 photos were taken from. There's a location map on the first  
6 page and they show six locations. Four of those locations  
7 are visible, and two of them are not visible?

8 A Correct.

9 Q And so the package also shows not only the balloon  
10 but then a simulation of the unipole, the stealth unipole in  
11 place of the balloon?

12 A Yes.

13 Q Thank you very much. I will not add to the record  
14 then with that. Ms. Morrison, can you describe, are you  
15 familiar with the requirement that batteries be, there be an  
16 affidavit submitted and information about batteries relating  
17 to hazardous materials?

18 A I know that the county requires that batteries for  
19 telecommunications facilities be registered as part of the  
20 hazardous materials that the county operates.

21 Q Okay. And so I have what is, I believe this is,  
22 mark it as Exhibit 23, and that is a hand signed letter from  
23 William O'Bryan, a real estate manager with T-Mobile dated  
24 July 6th.

25 A Correct.

1 (Exhibit No. 23 was marked for  
2 identification.)

3 BY MR. RAPISARDA:

4 Q Could you just identify this letter for the  
5 record.

6 A Yeah, it's a letter.

7 Q Or describe it.

8 A Yeah, Bill O'Bryan is the Real Estate Manager for  
9 T-Mobile. He's a T-Mobile employee and it's a statement  
10 that as to the equipment that will be used here and it's  
11 commitment to register the equipment as part of the  
12 Montgomery County Highness Facility Registration Program  
13 pursuant to the county code.

14 Q And attached to that is a --

15 A It's a description of the equipment that's used.

16 Q The fact sheet and the chemical safety  
17 information?

18 A Yes.

19 Q And then there's a material safety data sheet  
20 regarding the lead acid battery?

21 A Yes.

22 MR. RAPISARDA: Your Honor, what I have is a copy  
23 and an original. So would you like me to mark them with the  
24 same exhibit number?

25 MS. ROBESON: Yes, why don't you do that.

1 MR. RAPISARDA: So 22.

2 MS. ROBESON: Wait. I have 22 as the letter  
3 notifying the HOAs.

4 MR. RAPISARDA: Then 23 will be the supporting, or  
5 I could do 22(a) or 23.

6 MS. ROBESON: Twenty-three.

7 MR. RAPISARDA: Okay, 23 would be the --

8 MS. ROBESON: And can you mark them, we usually,  
9 can you mark the fact sheet as 23(a) and then the, is it  
10 material sheet?

11 MR. RAPISARDA: Yes. As 23(b)?

12 MS. ROBESON: As 23(b).

13 MR. RAPISARDA: So, is the letter 23? I thought,  
14 maybe the balloon test letter was 22?

15 MS. ROBESON: Yes.

16 MR. RAPISARDA: Okay, the balloon test letter was  
17 22, so then we have a letter from William O'Bryan and you  
18 would like that as 23, and then the other things 23(a)

19 MS. ROBESON: Yes.

20 BY MR. RAPISARDA:

21 Q Ms. Morrison, are you also familiar with potential  
22 impact on property values relating to monopolies?

23 A Yeah, in terms of the general criteria for special  
24 exceptions. The primary impact of (indiscernible).

25 Q Now that's an inherent adverse effect, but it's

1 still an impact, is that correct?

2 A It's an impact.

3 Q Are you familiar with --

4 MS. ROBESON: Wait. What's an inherent adverse  
5 effect, the visual?

6 THE WITNESS: It's the visual part of it as  
7 opposed to shopping, parking.

8 MS. ROBESON: Right. Okay, I'm sorry. Go ahead.  
9 I just didn't hear her.

10 BY MR. RAPISARDA:

11 Q And are you familiar with studies that have been  
12 done to evaluate whether the visual impact of a  
13 telecommunications facility adversely affects surrounding  
14 properties?

15 A Yes. There have been studies done of sales prices  
16 in this area, and it's effect of visibility in telecom  
17 sites.

18 Q And are you familiar with those studies?

19 A Yes.

20 Q Are you familiar with Mr. Oakley Thorn?

21 A Yes.

22 Q And has T-Mobile hired Mr. Oakley Thorn and used  
23 him as a consultant in the past relating to the potential  
24 impact, financial impact on property values relating to  
25 telecommunications facilities?

1           A     We have in the past.

2           Q     So you're familiar with Mr. Thorn?

3           A     Yes.

4           Q     Would you just identify this for the record.

5                   MR. RAPISARDA:  I will mark Mr. Thorn's CV or his  
6 resume or CV as Exhibit 24, and then I have a visual impact  
7 analysis of monopolies on residential housing prices, and  
8 I'll mark that as 24(a) if that's okay.

9                   MS. ROBESON:  That's fine.

10                                   (Exhibit No. 24a was marked for  
11                                   identification.)

12                   BY MR. RAPISARDA:

13          Q     Is this accurate to your knowledge, and I know  
14 these will speak for themselves, but is this accurate to  
15 what you know as Mr. Thorn's resume?

16          A     Yes.

17          Q     And is this report accurate to what you know about  
18 the two studies he did in Montgomery County?

19          A     Yes, this is considered public information at this  
20 point.

21          Q     Okay.  And in both of the Montgomery County  
22 studies that he did, was there an adverse impact to adjacent  
23 property values?

24          A     He did not find an adverse impact based on  
25 comparing of sales priced and time on the market of homes



1     within the same subdivision with a view of a tower and  
2     without a view of the tower. He did not see a change.

3                 MR. RAPISARDA: Okay, well I'll let these speak  
4     for themselves then. And I would like to offer them into  
5     evidence.

6                 MS. ROBESON: Since he's not here, but I'll take  
7     them.

8                 MR. RAPISARDA: Thank you very much.

9                 MS. ROBESON: He has, I think he testified here  
10    before a couple of times. Go ahead.

11                BY MR. RAPISARDA:

12            Q     So in terms of the exhibits that you've talked  
13    about, your testimony here today, and what you know was  
14    supported, do you believe that T-Mobile submitted  
15    documentation and testimony to comply with all aspects of  
16    the zoning code?

17            A     I believe so.

18            Q     And given your experience and in your expert  
19    opinion, are the inherent adverse effects or the non-  
20    inherent adverse effects of this proposal minimized because  
21    they're at this location on this property?

22            A     Yes, they're minimized because of the siting of  
23    the pole on the property and because of the design of the  
24    facilities.

25            Q     Thank you, Ms. Morrison, I don't have anything

1 further.

2 MS. ROBESON: All right.

3 MR. RAPISARDA: Next, I'd like to call Mr. Michael  
4 McGarity.

5 MS. ROBESON: Okay.

6 (Witness sworn.)

7 BY MR. RAPISARDA:

8 Q Mr. McGarity, could you just state your name,  
9 employer and your business address for the record.

10 A Yes. My name is Michael McGarity, MCC-G-A-R-I-T-  
11 Y. I work for Daft Mcune Walker. Business address is 200  
12 East Pennsylvania Avenue, Towson, Maryland 21286.

13 Q I'm not sure, have you testified here before as an  
14 expert in civil engineering?

15 MS. ROBESON: Yes, he's qualified as an expert in  
16 civil engineering.

17 BY MR. RAPISARDA:

18 Q Then would you just identify this summary resume.

19 A That is my resume.

20 Q Is it accurate?

21 A Yes, it is.

22 MS. ROBESON: So that'll be 25.

23 (Exhibit No. 25 was marked for  
24 identification.)

25 BY MR. RAPISARDA:

1 Q Mr. McGarity, are you familiar with the site?

2 A I am. I visited it on at least two occasions.

3 Q And did your firm prepare the drawings?

4 A Yes, they did.

5 Q Are you also familiar with the zoning code in  
6 Montgomery County?

7 A Yes, as it relates to telecommunications.

8 Q And was this site developed with those portions of  
9 the zoning code in mind?

10 A Yes.

11 Q Could you just describe, I think we did get into  
12 some of it with Ms. Morrison, but I if I could, I wanted to  
13 limit some of her testimony, so maybe with, if you could  
14 just describe the basic, the setbacks as you know them to be  
15 and as illustrated on these site plans.

16 A Sure. As Ms. Morrison briefly spoke about in her  
17 testimony, the proposed tower location is situated as such  
18 that it sits back 609 feet from the northern property line,  
19 624 feet from the eastern property line, 677 feet from the  
20 southern property line, and 75 feet to the western property  
21 line.

22 Q Okay. And other than the western 75 foot setback,  
23 do all those setback requirements meet the  
24 telecommunications facility provisions?

25 A Yes, they do.

1           Q     And does the 75 feet just meet the regular  
2 building setback provision, assuming that the board is able  
3 to grant the waiver and the hearing examiner is able to  
4 grant a waiver?

5           A     Yes, I believe it does.

6           Q     Okay. Are you familiar specifically with the code  
7 provisions, and I don't want to go through each one,  
8 although sometimes we do, and for the general special  
9 exception requirements?

10          A     Yes.

11          Q     And that's in 59-G-1.21?

12          A     Correct.

13          Q     And does this facility in your opinion comply with  
14 all of those general special exception requirements?

15          A     Yes, it does.

16          Q     And I know we just talked about the setback waiver  
17 but, since the code allows the waiver, does this also comply  
18 with all of the specific provisions in Section 59-g-2.58?

19          A     Yes.

20                MS. ROBESON: Well, I had a question. Have you  
21 been to the site?

22                THE WITNESS: I have.

23                MS. ROBESON: Is there anything based on your  
24 knowledge today that would prohibit you from extending the  
25 fencing and the landscaping to where it says future

1 expansion area?

2 THE WITNESS: No. That area is relatively flat  
3 and would certainly be able to accommodate any future  
4 carriers in that area.

5 MS. ROBESON: Okay.

6 THE WITNESS: But the only issue would be like,  
7 there wouldn't be any issue other than with my client T-  
8 Mobile working that out with the landlord.

9 MS. ROBESON: Yeah, their legal and economic  
10 issues.

11 THE WITNESS: Correct. There's no  
12 constructability issue with locating additional carriers  
13 there.

14 MS. ROBESON: Or the cabinet, putting the cabinets  
15 in or anything like that. All right. I just wanted that on  
16 the record. Go ahead.

17 BY MR. RAPISARDA:

18 Q So the way that it sits right now is T-Mobile is  
19 proposing a 25 x 20 compound?

20 A That's correct.

21 Q With future space that increases an additional 25  
22 x 35?

23 A That's correct.

24 Q So the total special exception compound area would  
25 be 25 x 55?

1           A     Yes.  Forgive me, I don't have the math on that,  
2     what the total square footage would be, but yes, that is  
3     correct, it would be 25 x 55.

4           Q     Okay.

5           MS. ROBESON:  Which is sufficient for two more  
6     carriers, correct?

7           THE WITNESS:  Yes.

8           BY MR. RAPISARDA:

9           Q     So your understanding the way it's proposed right  
10    now is that there would actually be landscaping on the  
11    eastern side of where T-Mobile's compound would be?

12          A     That's correct.

13          Q     And that as future carriers come in, you know,  
14    landlord leases additional space to them, those future  
15    carriers would be responsible for modifying and enhancing  
16    the landscaping as necessary?

17          A     Correct.  Removing the existing landscaping as  
18    necessary and replacing it around to screen their added  
19    equipment area.

20               MR. RAPISARDA:  I have nothing further for Mr.  
21    McGarity.

22               MS. ROBESON:  Thank you.

23               MR. RAPISARDA:  Thank you.  Next I'd like to  
24    call, --

25               MS. ROBESON:  He stepped away while you weren't

1 looking.

2 MR. RAPISARDA: He did not expect this to be that  
3 quick.

4 MS. ROBESON: Well, he can stay there as long as  
5 he needs to. We can take a few minutes --

6 MR. RAPISARDA: Would you like to go off the  
7 record?

8 MS. ROBESON: Yeah, we'll take a few minutes  
9 break.

10 (Whereupon, a brief recess was taken.)

11 MS. ROBESON: We're back on the record.

12 MR. RAPISARDA: So, I'd like to introduce Mr.  
13 Curtis Jews.

14 MS. ROBESON: No introduction necessary.

15 (Witness sworn.)

16 DIRECT EXAMINATION

17 BY MR. RAPISARDA:

18 Q Mr. Jews, could you just state your name, company  
19 and address for the record?

20 A Curtis Jews, with a C. Last name is J-E-W-S.  
21 Business address, 10250 Baltimore Avenue, Beltsville,  
22 Maryland.

23 Q Who's your employer?

24 A T-Mobile.

25 Q Is this a copy of your resume?

1           A     Yes, it is.

2                   MR. RAPISARDA: I'd mark that as Exhibit 26.

3                               (Exhibit No. 26 was marked for  
4                               identification.)

5                   BY MR. RAPISARDA:

6           Q     Is this accurate?

7           A     Yes, it is.

8                   MR. RAPISARDA: And I understand Mr. Jews has been  
9 here before --

10                  MS. ROBESON: Yes.

11                  MR. RAPISARDA: -- so I would like to offer him as  
12 an expert in radio frequency engineering and wireless  
13 network coverage.

14                  MS. ROBESON: He is accepted as an expert.

15                  MR. RAPISARDA: Thank you. And then I'd like to  
16 move his resume in as Exhibit 26.

17                  MS. ROBESON: Thank you.

18                  BY MR. RAPISARDA:

19           Q     Could you briefly describe the work you do for T-  
20 Mobile?

21           A     I am responsible for designing and expanding T-  
22 Mobile's wireless network.

23           Q     And, in this area where we're proposing a site,  
24 does T-Mobile have a need for coverage?

25           A     Yes, they do.



1                   MS. ROBESON: Now, when you say area, why don't  
2 you mark that as 27. I think it's already in the staff  
3 report, but let's just mark that as a separate exhibit.

4                   MR. RAPISARDA: Okay, and then we could do 27, we  
5 have this one as existing, then we have the one that's  
6 proposed. We could do 27 and 27(a)?

7                   MS. ROBESON: Sure.

8                                 (Exhibit No. 27a was marked for  
9                                 identification.)

10                  MS. ROBESON: So this is the propagation map?

11                  THE WITNESS: Existing coverage map without the  
12 proposed (indiscernible).

13                  MS. ROBESON: 27(a) will be the existing coverage  
14 and (b) will be proposed.

15                  BY MR. RAPISARDA:

16                  Q     And, if you could, Mr. Jews, could you describe  
17 what this map is and why it's important.

18                  A     Okay, what this map is, is a coverage map. And  
19 also let me speak to the area, a little bit more specific.  
20 The area is going to be east of Seneca Highway and north of  
21 Clopper Road. That is the area needing coverage. This is a  
22 coverage map, and would recommend me talk about the colors.  
23 We have green, which is your in building coverage, what you  
24 can experience in your home. In vehicle is the coverage you  
25 can expect inside of your automobile, and yellow is the

1 coverage that you could expect while holding the phone to  
2 your head or walking along the street.

3 Q And the difference in that coverage, does that  
4 have to do with what they call clutter where the building,  
5 you know, you have better coverage outside because you don't  
6 have the construction materials blocking it?

7 A That's correct. Yeah, that's basically the  
8 coverage you expect if you're just walking along the roadway  
9 or the sidewalk.

10 Q And so when you look at, when you analyze T-  
11 Mobile's network, are you looking, there's certain things  
12 that trigger a priority, and what are those things, like  
13 drop calls or?

14 A The first thing is the customer's experience,  
15 dropped calls and also the ability to make 911 calls.

16 Q Okay. And so this is a radio frequency  
17 propagation map. Did you create this?

18 A I did.

19 Q And is this accurate?

20 A Yes, it is.

21 Q Depiction. And from this, is this like a first  
22 step of okay we need coverage? Is this where you realized  
23 T-Mobile needs coverage?

24 A Yes. Once again, it's this and also the customer  
25 experience.

1           Q     So we will get back to that and I'll move this  
2     into evidence and give it to you, and fold it up maybe once  
3     we finish, in case we re-refer to it.

4           MS. ROBESON:   We'll fold it up.

5           MR. RAPISARDA:   So unless you have any other  
6     questions about that, I'll have him sit down now.

7           MS. ROBESON:   No.   Is he going to do proposed with  
8     the LAM?

9           MR. RAPISARDA:   That'd be good to do now.   Could  
10    you show them the proposed, and that's marked as 27(b).

11                           (Exhibit 27b was marked for  
12    identification.)

13           THE WITNESS:   Okay, first let me back up.   Right  
14    now without the existing site you see a predominant level of  
15    in vehicle coverage, which is blue and spots of yellow which  
16    is your on street coverage in this area.   This area being  
17    east of Seneca Highway and north of Clopper Road.

18           The proposed site, the area which was once  
19    predominantly blue is now green and there's a significant  
20    increase or improvement in in-building coverage.   Also, I  
21    want to state that this will also serve as an improvement in  
22    voice, but also for data.

23           BY MR. RAPISARDA:

24           Q     And at 95 feet that meets your coverage  
25    objectives?

1           A     Yes.

2           Q     Okay.  And you also evaluated and this was part of  
3     the package, but you evaluated lower heights, is that  
4     correct?

5           A     I did.

6           Q     Okay.  And was this the lowest height that T-  
7     Mobile could place its antennas and still meet its coverage  
8     objectives?

9           A     That is the lowest that I could do.

10          Q     All right.  Thank you very much about this.

11               MR. RAPISARDA:  I have some data that you provided  
12     me.  I will mark this as Exhibit 28, and if you could just  
13     describe, and I could give you a copy now.

14                         (Exhibit No. 28 was marked for  
15                         identification.)

16               BY MR. RAPISARDA:

17          Q     There's three pages of data there.  Could you just  
18     identify the first page?

19          A     The first page is labeled as 1101 surrounding  
20     sites drop call data.

21          Q     And could you, for the hearing examiner, could  
22     you, and she has a copy of this, could you walk us through  
23     what this top sheet, what it is.  What this data represents.

24          A     Sure.  What I'm showing here are the neighboring  
25     sites.  When I say neighboring sites, these are the sites

1   that are currently on air that T-Mobile is using that are in  
2   service.

3           Q     Excuse me one second, I'm sorry to interrupt you.

4   I think that if we're going to do that, this puts it into  
5   perspective. I'm going to mark this map as Exhibit 29.

6   This is a map showing the four adjacent closest sites T-  
7   Mobile has on air.

8           A     That's correct.

9                                 (Exhibit 29 was marked for  
10                                identification.)

11           BY MR. RAPISARDA:

12           Q     And so this is a map where you just show the  
13   location of these various sites?

14           A     Yes.

15           Q     And so the data that we're about to look at  
16   actually comes from these surrounding sites?

17           A     Yes.

18           Q     Did you create this map?

19           A     Yes, I did.

20           Q     Is it accurate?

21           A     Yes, it is.

22           MR. RAPISARDA: Move this in as Exhibit 29.

23           BY MR. RAPISARDA:

24           Q     So if you look at that map of adjacent existing  
25   sites, in the center of that map it also has North Lake

1 Apartments, which is the proposed one here at Grey Eagle  
2 Court, correct?

3 A That's correct.

4 Q So if you could, tell us now about this dropped  
5 call data.

6 A Sure. Okay, there are two sections labeled as  
7 sector stats, and total site stats. Now the total site  
8 stats is the aggregate of all the sector or antennas  
9 attached to the neighboring or on-air sites, but I show on  
10 the top the sector stats of only the sectors or antennas  
11 that actually serve the area that we're proposing to improve  
12 coverage.

13 Q So some of these existing sites actually have a  
14 sector that faces away from Gray Eagle Court? So you're not  
15 trying to take into account, at least in this top chart, any  
16 sectors that point away. And you wouldn't evaluate, you  
17 wouldn't use that in your evaluation as to whether we need  
18 one at Gray, or whether T-Mobile needs new coverage at Gray  
19 Eagle Court. You'd want to just use the sectors that point  
20 toward Gray Eagle Court.

21 A That's correct.

22 Q And so --

23 A So that is the data that you're looking at for all  
24 three surrounding sites dropped call data, surrounding sites  
25 call attempt data, and the E911 surrounding sites call data

1 are all formatted that way where the sector stats are the  
2 first, for the top portion and aggregated is the bottom.

3 Q I have some more specifics that I hope will clear  
4 it up for the record and in my own head sometimes too, and  
5 for yours if you need it, but so this dropped call data, a  
6 dropped call is when there's a connection between a cell  
7 phone and the tower and then it's lost?

8 A It is an abnormal termination of the call. It  
9 wasn't made by the user.

10 Q And what is call attempt? Is that when you  
11 actually are trying to make a call and it won't go through?

12 A That's correct. That's just the number of times  
13 the network was accessed or an attempt was made.

14 Q But some of these went through?

15 A That's correct.

16 Q Many of these may have gone through?

17 A Many of these --

18 Q Okay, so this isn't, that just tells you the  
19 usage.

20 A (Indiscernible.)

21 Q And then where it says E911 that means enhanced  
22 911, and that says how many emergency calls are being made  
23 to 911 on a cell phone at the sector's pointing into this  
24 area?

25 A That's correct.

1           Q     So there are 66,840 dropped calls over the last  
2     year?

3           A     Over the last year, yes.

4           Q     In the general area when we are proposing this new  
5     tire?

6           A     That's correct.

7           Q     And there were 35,410,000 more than that total  
8     calls made?

9           A     Yes, in a 12 month period. Call attempts.

10          Q     And there were over 9,900 911 calls from the  
11     existing site?

12          A     Yes.

13          Q     So this data shows a need, shows T-Mobile has to  
14     improve and provide better coverage in the area and supports  
15     why this site became a priority?

16          A     That's correct.

17          Q     Do you have anything else to add about this data?

18          A     I do not.

19                MS. RAPISARDA: Do you have any questions about  
20     this data at all?

21                MS. ROBESON: Well, I wonder if you're going to  
22     give me an estimate of what percentage, how the dropped call  
23     rate is going to improve.

24                THE WITNESS: To give a total number or how it  
25     would improve?



1 MS. ROBESON: Yes.

2 THE WITNESS: I'm not sure. I do know that we  
3 tried to optimize the network to where there's a, we call it  
4 GOS, a grade of service, to where there's less than two  
5 percent of dropped calls that occur in a certain area, or  
6 the sector that is serving that area. We've got to make  
7 sure that in that area there's less than two percent of  
8 dropped calls.

9 MS. ROBESON: So right now your percentage of  
10 dropped calls for the sector is 66,840 from, well do you  
11 compare it with the attempt data?

12 THE WITNESS: No, not the attempt data. Actually,  
13 this is data more of a key performance indicator data where  
14 we look at call failures, dropped calls, abnormal  
15 terminations. This is another stat that we track daily. So  
16 this is separate from this.

17 MS. ROBESON: So I guess I'm getting at, how is  
18 this going to improve your dropped call data?

19 THE WITNESS: What it's going to do is the numbers  
20 obviously will be decreased as far as the neighboring sites,  
21 the number of calls, for example, WAN264A underscore B means  
22 the D sector, has a total right now of 16,000, over 16,000  
23 dropped calls. So with the use of this site, that number  
24 will be decreased because we'll have more resources to help  
25 out. A lot of times if there -- in this area where right

1   now apparently we only have in vehicle coverage, so what's  
2   happening is whatever service or coverage that is existing  
3   is what the users or the customers can only rely on right  
4   now.  If, for example, there are capacity issues where we  
5   have a number of users and has exceeded the amount on, let's  
6   say WAN434, which is west of WAN01, then it would have to  
7   try to use the resources of the other sites around it.

8                   MS. ROBESON:  Okay.

9                   THE WITNESS:  So with the use of this site, it  
10   will decrease the impact on the other surrounding sites.

11                   BY MR. RAPISARDA:

12           Q     So you can't predict right now what this dropped  
13   calls will drop to?

14           A     I cannot predict.  I know for certain there will  
15   be an improvement.  What that actual number is, I cannot  
16   give you that.

17                   MS. ROBESON:  I guess what I'm getting at is as  
18   far as the finding of need, is that well, one less dropped  
19   call is an improvement, so you know, where are we in the  
20   range of improvement as far, -- how do you measure, besides  
21   the propagation map, how do you measure the anticipated  
22   improvement?

23                   THE WITNESS:  I can say as far as the sites that  
24   are, let's say for example, once again, WAN454, WAN264 and  
25   WAN077, these first tier sites --

1 MS. ROBESON: Yeah.

2 THE WITNESS: These sites are having some access  
3 value issues because we don't have enough capacity in the  
4 area. So that is another need. So, yes it is about  
5 coverage and capacity. So they are exceeding that greater  
6 service of two percent that we're looking for. And that  
7 varies. Sometimes it may be three, four percent, it depends  
8 on the day, it depends on the hour. Also, this is a heavily  
9 traveled highway, Seneca Highway and Clopper Road. So  
10 there's in vehicle, there's vehicular call traffic that has  
11 to be taken into account. So all three, in building, in  
12 vehicle and on the street.

13 BY MR. RAPISARDA:

14 Q Are you also familiar with the dense residential  
15 population surrounding the area?

16 A I am.

17 Q And so is one of T-Mobile's goals to provide that  
18 in building coverage that doesn't currently exist?

19 A That's correct.

20 MS. ROBESON: Okay.

21 BY MR. RAPISARDA:

22 Q So you use radio frequency propagation maps as  
23 well as data, as well as your own background and experience  
24 to form an opinion as to whether T-Mobile needs coverage in  
25 this area?

1           A     Yes.

2           Q     Is this the only area in the country that T-Mobile  
3 might need coverage?

4           A     No, it's not.

5           Q     Okay, so this has been prioritized to the extent  
6 that T-Mobile is now investing with the landlord and zoning  
7 and development plan application and radio frequency  
8 engineering and other engineering. Is it a priority because  
9 this area, because in your opinion and in T-Mobile's  
10 opinion, I guess, their greater opinion, that this area has  
11 a need for coverage and that they have to fill that coverage  
12 cap?

13          A     It does have a need.

14          Q     Are any of these numbers on the, which is Exhibit  
15 28, like for instance a dropped call, having 28,000 dropped  
16 calls, I'm sorry, 23,000 dropped calls from a sector, is  
17 that a large number in your experience?

18          A     It is a large number.

19                MS. ROBESON: How much larger?

20                THE WITNESS: How much larger?

21                MS. ROBESON: I'll leave it. You can't answer off  
22 the top of --

23                THE WITNESS: No.

24                BY MR. RAPISARDA:

25          Q     Would you just have to see the data on all the

1 other ones?

2 A Yeah, yeah. Because number just varies.

3 Q Okay. So is there any question in your mind that  
4 T-Mobile does not need a new facility in order to meet its  
5 coverage objective?

6 A No, we need this facility.

7 Q And there is absolutely no place to co-locate your  
8 antennas?

9 A No. We've already demonstrated on the site  
10 proximity map. We've already shown that we're already on  
11 the existing structures in the area and this will provide a  
12 better balance of coverage to this area.

13 Q Okay. Now in terms of, I'll mark this as Exhibit  
14 30, could you identify this for the record?

15 A This is a letter that I have prepared and signed  
16 that says that we will conform with the FCC standards and  
17 guidelines for the use of this facility, dated on 7/6/11.

18 (Exhibit No. 30 was marked for  
19 identification.)

20 MS. ROBESON: And who's that letter from, you, did  
21 you say?

22 THE WITNESS: Yes.

23 MS. ROBESON: All right, letter from Curtis Jews.

24 BY MR. RAPISARDA:

25 Q So this is a certification that it will comply

1 with all FCC standards and guidelines, and that it will not  
2 degrade or interfere with the county's public safety  
3 communication systems?

4 A That's correct.

5 MR. RAPISARDA: I'd like to move this as Exhibit  
6 30.

7 MS. ROBESON: Okay. Thank you.

8 BY MR. RAPISARDA:

9 Q And actually, as the hearing examiner earlier had  
10 asked about a report relating to RF and RF energy, could you  
11 identify this, I'll mark this as Exhibit 31, but could you  
12 identify what the name of this report?

13 A This is radio frequency electromagnetic energy  
14 compliance report.

15 (Exhibit No. 31 was marked for  
16 identification.)

17 Q And was this prepared for T-Mobile?

18 A Yes, it was.

19 Q Are you familiar with this report?

20 A I've looked at it. I did not prepare it.

21 Q Okay, No, but this was prepared by EDI  
22 Consulting?

23 A Yes.

24 Q And does this also support, -- this looked at the  
25 RF energy and the FCC guidelines?

1           A     Yes.

2           Q     And does this ultimately conclude, and I'm looking  
3     at page 8 right now when I question you, that this complies  
4     with FCC guidelines?

5           A     Yes.

6                     MR. RAPISARDA:  I'd like to move this into  
7     evidence as Exhibit 31.

8                     MS. ROBESON:  That's fine.

9                     BY MR. RAPISARDA:

10          Q     So in your opinion, will the location, elevation,  
11     engineering, the stealth design, and the fact that there are  
12     no co-location opportunities, does this proposal provide T-  
13     Mobile what it needs to fulfill its coverage objectives?

14          A     Yes, it will.

15          Q     Okay.  Not only its goals but also its  
16     responsibilities under its FCC licenses?

17          A     Yes, it will.

18                     MR. RAPISARDA:  I have nothing further for Mr.  
19     Jews, unless you do.

20                     MS. ROBESON:  No, I don't.  Anyone else?

21                     MR. RAPISARDA:  I have no other witnesses.

22                     MS. ROBESON:  Okay.

23                     MR. RAPISARDA:  Maybe make a brief closing if  
24     you'd allow it.

25                     MS. ROBESON:  Okay.  Before you do that, so you

1 can address it on closing, I did check on the last break  
2 with the other hearing examiner who has been here quite a  
3 while, and he was not familiar with any cases which didn't  
4 show the entire compound. It may be, you know, just an  
5 anomaly that he didn't get them, but if you have evidence of  
6 this being a longstanding interpretation, then I would  
7 request that you submit the cases. I'm not sure I agree  
8 with the interpretation but, you know, the other option is  
9 what we discussed is amending the plan just to show the  
10 fencing and landscaping around and to include the entire  
11 compound area.

12 MR. RAPISARDA: So, as I see this right now, there  
13 are two options. The first would be as is, future carriers  
14 have to amend the special exception. It's a 25 x 20  
15 compound. Yeah, there's the area for future carriers, but  
16 that's not part of what's being approved today. And, that  
17 that requirement about the space in the compound for future  
18 carriers, since it only attaches the waiver -- that's what  
19 you're saying that you discussed that issue with the other  
20 hearing examiner?

21 MS. ROBESON: Yes. And he's not aware of that  
22 interpretation.

23 MR. RAPISARDA: Okay.

24 MS. ROBESON: In our discussion, just for the  
25 record, you know, he pointed out that it doesn't make sense



1 to have a telecommunication pole designed for three carriers  
2 if you're not assured that that whole compound will be, you  
3 know, that the land is reserved and it'll be up to the  
4 standards to be required for Park and Planning. I have only  
5 been here, I have, you know, I don't have experience with  
6 your interpretation or with all due respect, I'm sure you're  
7 basing it on something, but if you want me to look at the  
8 cases that support this interpretation, I mean it would help  
9 me to have the cases in front of me.

10 So the other option, as we said, would be to  
11 include the entire area and ERP can sign off as to, you  
12 know, just the fencing and the landscaping.

13 MR. RAPISARDA: Okay, so we really have two issues  
14 or two options, I guess. And for that reason, we'd request  
15 that the record remain open.

16 MS. ROBESON: That's fine.

17 MR. RAPISARDA: Now we will talk with T-Mobile, we  
18 will talk with ERP, and we will pull the cases, and/or pull  
19 the cases together.

20 MS. ROBESON: Okay. Now, if you want to expand  
21 the area, I have to do a notice of motion to amend the  
22 petition. There's a 10 day response. You know, I have to  
23 leave the record open for at least 10 days in the event  
24 anyone objects. I mean, given that we have the pole today,  
25 I think it would be unlikely that someone would object, but

1 in any event, that is, if you're calculating days to ask to  
2 keep the record open, and we generally also refer it back to  
3 staff, although again, I don't think that's going to be a  
4 huge issue because you're just filling out the area that  
5 you're marking for the expansion.

6 MR. RAPISARDA: Right. Well, staff's report  
7 already says they plan on expanding it to add future  
8 carriers, and the landlord will lease the land to them. And  
9 then in the justification statement also says, you know, as  
10 co-applicants they agree that this area will be used, but  
11 the landlord will just say how and when and how much.

12 MS. ROBESON: Well, we'll see what you submit.  
13 But in any event, I'm not going to commit to not discussing  
14 it with staff further right now, but I don't think, I think  
15 that it doesn't need a huge, you know, review. We often  
16 just touch base with staff by e-mail. Now I have to send  
17 out the notice of motion to amend if you submit a new plan,  
18 and I have to leave the record open 10 days for that.

19 MR. RAPISARDA: After the notice?

20 MS. ROBESON: After the notice, yes. So, in other  
21 words, right now I don't know if you're going to amend your  
22 plan.

23 MR. RAPISARDA: We could just ask to keep the  
24 record open until we get back to you, is that enough? Or  
25 are you looking for a specific time frame?

1                   MS. ROBESON: We generally use a specific time  
2 frame. Now, you know, we can decide a time frame and if  
3 that's not enough you can request more time. You can always  
4 do it that way.

5                   MR. RAPISARDA: We would like to keep the record  
6 open for 21 days.

7                   MS. ROBESON: Okay, so that would be July 21st?

8                   MR. RAPISARDA: No, that would be the 31st, or no,  
9 32nd, which doesn't exist, so let's go with August.

10                  MS. ROBESON: Well, at least I didn't say July  
11 32nd. August 1st?

12                  MR. RAPISARDA: That might be a Sunday, so let's,  
13 I'm powering up my calendar. August 1st is a Monday. So  
14 Monday the first?

15                  MS. ROBESON: Okay. I just want to give you fair  
16 warning so that you have the full opportunity to address  
17 everything.

18                  MR. RAPISARDA: Sounds good. So if I could for  
19 the record just do a brief closing.

20                  MS. ROBESON: Absolutely.

21                  MR. RAPISARDA: So ultimately T-Mobile is seeking  
22 a new telecommunications facility. It complies with all of  
23 the code requirements as they set forth, requesting the  
24 waiver that's granted. That would be a 20 foot waiver to  
25 allow a 75 foot setback. Not only would it make it be more

1 visually appealing, but it would also, T-Mobile would ensure  
2 they're protecting CSX's property.

3 This is one additional step after the tower  
4 committee. As you know that they're also the next step if a  
5 special exception is granted, there will be a development  
6 plan amendment because this is a PD-9 zone, and that will be  
7 before the District Council. And so after --

8 MS. ROBESON: Actually, you may have, no, you may  
9 not have to come back to us. But anyway, go ahead.

10 MR. RAPISARDA: We spent about a year going back  
11 and forth between the various agencies and county attorney's  
12 office about which comes first, the DPA or the --

13 MS. ROBESON: The chicken or the egg.

14 MR. RAPISARDA: Exactly. And so we all agreed  
15 that this was the way to go first and this would be the good  
16 foundation for it. So I think that the application package  
17 with the couple corrections that we made on the record, as  
18 well as the staff report and the evidence, shows that  
19 there's been compliance. We're going to leave the record  
20 open for 21 days, or we ask that it be left open for at  
21 least 21 days so that we can investigate whether we want to  
22 move forward with just the 25 x 20 and maybe some legal  
23 support for why that code interpretation is that way, or  
24 whether T-Mobile and ERP want to amend it, the site plan, to  
25 show a 50 x 25, 55 x 25 compound.

1 MS. ROBESON: Right, okay.

2 MR. RAPISARDA: And that's the extent of my  
3 closing. Thank you very much.

4 MS. ROBESON: Okay, thank you very much. And with  
5 that, the record is open until August 1st and this hearing  
6 is adjourned. Thank you.

7 (Whereupon, at 12:18 p.m., the hearing was  
8 concluded.)

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% Digitally signed by Keena Lukacinsky

ELECTRONIC CERTIFICATE

DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Office of Zoning and Administrative Hearings for Montgomery County in the matter of:

Petition of ERP Operating Limited Partnership and  
T-Mobile Northeast, LLC, Case No. S-2809

By:

A handwritten signature in black ink, appearing to be 'KL', written over a horizontal line.

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Keena Lukacinsky, Transcriber